

# Budget Brief – Post Conviction Indigent Defense Fund

NUMBER CFGO-07-11

## SUMMARY

UCA 78-35a-202 allows persons convicted of a capital crime and sentenced to death to challenge the conviction and have counsel appointed. If a defendant requests counsel and is determined by the court to be indigent, costs of counsel and other reasonable litigation expenses incurred in providing the representation must be paid from state funds by the Division of Finance.

The program was managed by the Attorney General's office for a period of time but was moved into a separate line item to avoid the appearance of a conflict resulting from the AG prosecuting individuals while directly funding their defense. Funds are housed in the Division of Finance for administrative purposes only.

The Division of Finance also manages two accounts that are similar to the Post Conviction Fund. These accounts are funded by participating counties with statutory language for legislative consideration of any shortfall:

- The *Indigent Inmate Defense Fund* is for inmates convicted of crimes while in prison. Sanpete County uses the program for inmates accused of crimes committed at the state prison in Gunnison. No other counties participate at this time.
- The *Indigent Capital Defense Fund* provides money to defend indigents charged with capital crimes in participating counties. The Division of Finance assesses the twenty-four participating counties annually and should be able to manage the fund in FY 2007 without state assistance.

## ISSUES AND RECOMMENDATIONS

### Use Carry-Forward Balances

The program should be able to continue with carry-forward balances in FY 2008. After expending \$50,600 in FY 2006, the fund had \$269,400 remaining in nonlapsing balances. Even if expenditures rise to the program's current year appropriation of \$74,000, the nonlapsing balance in the program should be sufficient to meet FY 2007 and FY 2008 expenditures. However, at some point in the future the program's nonlapsing balance will run out, requiring additional state funding for the program.

Figure 1: Administrative Services - Post Conviction Indigent Defense - Budget History

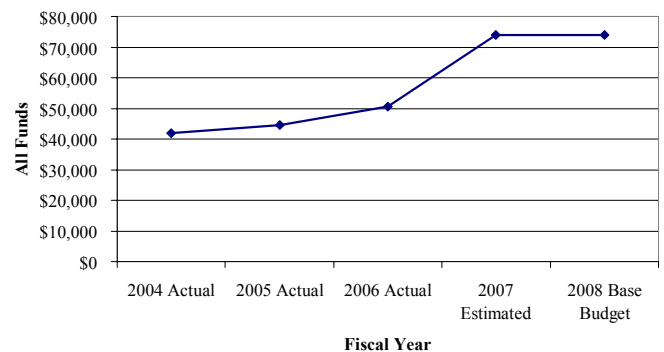
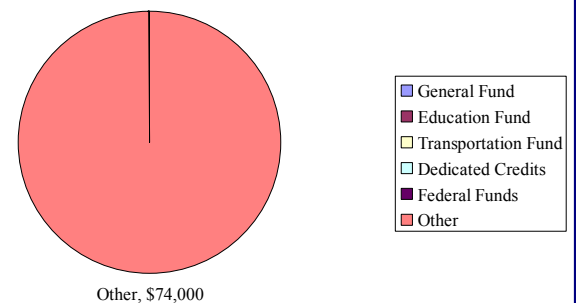


Figure 3: Administrative Services - Post Conviction Indigent Defense - FY 2008 Funding Mix



**ACCOUNTABILITY DETAIL*****Carry-Forward Balances Should Last Until FY 2010***

Since FY 2002 annual expenditures in this program have averaged \$45,700. If expenditures from FY 2007 forward average \$60,000 per year, nonlapsing balances will suffice through FY 2010.

**BUDGET DETAIL**

A General Fund appropriation was last made in FY 2002. Since then, this program has expended nonlapsing carry-forward balances only.

***Budget Recommendation for FY 2008***

The Analyst recommends a total FY 2008 appropriation of \$74,000, entirely from nonlapsing balances.

***Intent Language***

The Analyst recommends the Legislature adopt the following supplemental intent language for Fiscal Year 2007:

*Under terms of UCA 63-38-8.1(3), the Legislature intends not to lapse Item 39, Chapter 1, Laws of Utah 2006. Expenditure of these funds is limited to: Current Expenses - \$250,000*

**LEGISLATIVE ACTION**

The Analyst recommends the Legislature adopt:

1. A total FY 2008 appropriation of \$74,000 for the Post Conviction Indigent Defense Fund.
2. Intent language making the FY 2007 appropriation nonlapsing but limited to uses specified in the language.

**BUDGET DETAIL TABLE**

Administrative Services - Post Conviction Indigent Defense						
Sources of Finance	FY 2006 Actual	FY 2007 Appropriated	Changes	FY 2007 Revised	Changes	FY 2008* Base Budget
Beginning Nonlapsing	320,000	246,000	23,400	269,400	(74,000)	195,400
Closing Nonlapsing	(269,400)	(172,000)	(23,400)	(195,400)	74,000	(121,400)
<b>Total</b>	<b>\$50,600</b>	<b>\$74,000</b>	<b>\$0</b>	<b>\$74,000</b>	<b>\$0</b>	<b>\$74,000</b>
<b>Programs</b>						
Post Conviction Indigent Def Fund	50,600	74,000	0	74,000	0	74,000
<b>Total</b>	<b>\$50,600</b>	<b>\$74,000</b>	<b>\$0</b>	<b>\$74,000</b>	<b>\$0</b>	<b>\$74,000</b>
<b>Categories of Expenditure</b>						
Current Expense	50,600	74,000	0	74,000	0	74,000
<b>Total</b>	<b>\$50,600</b>	<b>\$74,000</b>	<b>\$0</b>	<b>\$74,000</b>	<b>\$0</b>	<b>\$74,000</b>
*Does not include amounts in excess of subcommittee's state fund allocation that may be recommended by the Fiscal Analyst.						